

Approved as Submitted: June 2, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MAY 19, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:10 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Chang (arrived at 7:00 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Agency Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

City Attorney Leichter announced the below listed closed session items.

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Hacienda Valley Mobile Estates v. City of Morgan Hill
Case Numbers: Santa Clara Superior Court, Case No. CV 80-7708;
Ninth Circuit Court of Appeal, Case No. 02-15986

3.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957
Public Employee Performance Evaluation: City Attorney
Attendees: City Council, City Attorney

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: Foye v. City of Morgan Hill Case Number:
WCAB SJO 204468

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:11 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:10 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORT

Mayor Kennedy reported that he serves on the Santa Clara Valley Transportation Authority (VTA) Policy Advisory Committee as well as an alternate to the Board of Directors of the Santa Clara VTA. He stated that the biggest issue facing the VTA is the Bart extension to San Jose, indicating that there is concern that the bulk of funds approved by the voters may be used for Bart, leaving little funding for Caltrain, light rail extension and other transit systems. He stated that the VTA advisory committee appointed a subcommittee and that he was appointed to this subcommittee. He indicated that the subcommittee will be coming up with recommendations for the policy advisory committee on how to address concerns about insufficient funding being made available for other transit projects. He also reported that last week Council Member Chang, Mayor Pro Tempore Sellers and he were in Sacramento with the organization called LOCAL, a coalition of local governments that includes cities, counties, the League of California Cities, State County Association, special districts and others. He indicated that this organization was successful in placing an initiative on the November ballot to prevent the taking away of property taxes and other revenue sources from cities, counties and special districts. The qualification of the ballot initiative provided the organization some leverage to negotiate an agreement with the Governor for cities, counties and special districts to give up some of the property tax revenues to the State over the next two years. The State would then agree to make some structural changes to protect and preserve local tax revenues for cities, counties and special districts. He indicated that the Governor addressed this body in a meeting held in Sacramento. He felt that this was a successful conclusion to a lot of hard work on the part of all local governments.

Assistant to the City Manager Eulo reported that the Legislative Subcommittee met on May 7, 2004 and that the Subcommittee is recommending that the Council take the following positions: 1) Support AB2741 (expanding the membership for Alameda and South Santa Clara County on the MTC); 2) Support AB2922 (provides for a CEQA exemption for housing near transit center, consistent with the plans Morgan Hill has made for the downtown); 3) Support AB3011 (authorizing VTA to establish a small additional vehicle license fee to help support their traffic congestion management efforts); 4) Support SB1161 (a bill that would place a measure on the ballot for a library bond, similar to the one the City has been participating in); 5) Support having the State High Speed Rail Authority keep the routes going through the south bay with the proviso that none of the routes should go through, over or under Henry Coe Park and potentially working with the High Speed Authority on siting a station in Morgan Hill); 6) Support the League's Wildland Urban Interface Fire Policy (an effort that the League of California Cities along with the California State Association of Counties have undertaken to address wildland urban interface issues); 7) Support the Restoration of Section 108 Loans in the Federal Budget (CDBG dollars); and 8) Not take a position on AB 2032 (allows VTA to establish toll lanes in existing carpool lanes). He indicated that the Subcommittee did not consider this bill to be a matter of direct interest to the City as carpool lanes are not provided on the highways going through Morgan Hill. He indicated that with the Council's approval of these recommendations, staff would send letters to the authors with these positions.

Council Member Tate noted that the High Speed Rail is also listed on the Consent Calendar and that he was going to have this item pulled for further discussion. He deferred discussion on this item until the Consent Calendar is considered.

CITY MANAGER REPORT

City Manager Tewes indicated that he has an agenda revision. He informed the Council and the public that Police Chief Cumming has been in touch with the President of Independence Day Inc. (IDI) who has asked that this matter be rescheduled for a subsequent meeting. Therefore, the presentation of item 30 will be deferred to a future meeting at IDI's request.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Jim Arthur requested an update on what has transpired in the last few weeks with regards to the City of San Jose's proposal for the Coyote Valley expansion. It was his recollection that two Council meetings

ago, it was proposed that the Council would be meeting with Supervisor Gage and holding other subsequent meetings.

City Manager Tewes indicated that at 5:00 p.m. this afternoon, the Council met with Supervisor Gage and representatives from the following agencies/organizations: City of Gilroy, Morgan Hill Unified School District, Gavilan College, San Martin Neighborhood Alliance, and the Open Space Authority. These agencies identified a series of issues that should be taken to the City of San Jose. He stated that these issues will be documented and conveyed in a formal way to the City of San Jose. He indicated that Mayor Kennedy announced a willingness from Mayor Gonzales to meet with a group of individuals to talk about this participation. He stated that this meeting will be scheduled in the near future as well as a subsequent meetings of the organizations.

Council Member Tate announced that the annual Relay for Life will take place this weekend at Oakwood School. He stated that all funds collected help fight cancer and that all proceeds will go to the American Cancer Society. He noted that this has been a successful fundraiser in Morgan Hill and that he would be more than happy to take pledges.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Pro Tempore Sellers requested that item 2 and Council Member Tate requested that item 3 be removed from the Consent Calendar.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 4-19 as follows:*

1. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #1**
***Action:** **Accepted** and **Filed** the RDCS First Quarter Report for 2004.*
4. **SUPPORT OF LEAGUE OF CALIFORNIA EFFORTS TO ADDRESS WILDLAND URBAN INTERFACE FIRE ISSUES**
***Action:** **Approved** Resolution No. 9792.*
5. **APRIL 2004 FINANCE & INVESTMENT REPORT**
***Action:** **Accepted** and **Filed** Report.*
6. **SUBDIVISION APPLICATION, SD-03-09: NATIVE DANCER-QUAIL MEADOWS**
***Action:** **Took No Action**, Thereby concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

7. **APPROVAL OF RESOLUTION PROVIDING COMPENSATION FOR CITY OF MORGAN HILL MANAGEMENT AND CONFIDENTIAL EMPLOYEES**
Action: **Adopted** Management Resolution No. 5793.
8. **APPOINTMENTS TO THE ARCHITECTURAL AND SITE REVIEW BOARD (ARB)**
Action: **Approved** the Mayor's Appointment of Incumbent Board Members Lori Cain and Yarmila Kennett to Serve Two-Year Terms Expiring June 1, 2006.
9. **AQUATICS CENTER PROJECT – APRIL CONSTRUCTION PROGRESS REPORT**
Action: **Information** Only.
10. **ACCEPTANCE OF CONSTRUCTION OF MAIN WELL NO. 2 AND SAN PEDRO WELL PROJECT**
Action: 1) **Accepted** as Complete the Construction of Main Well No. 2 and San Pedro Well Project in the Final Amount of \$686,928; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
11. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9384, MONTE VILLA PHASE I**
Action: 1) **Adopted** Resolution No. 5794, Accepting the Subdivision Improvements Included in Tract 9384, Commonly Known as Monte Villa Phase I; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
12. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9385, MONTE VILLA PHASE II**
Action: 1) **Adopted** Resolution No. 5795, Accepting the Subdivision Improvements Included in Tract 9385, Commonly Known as Monte Villa Phase II; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
13. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9400, COYOTE ESTATES PHASE VI**
Action: 1) **Adopted** Resolution No. 5796, Accepting the Subdivision Improvements Included in Tract 9400, Commonly Known as Coyote Estates Phase VI; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
14. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9461, COYOTE ESTATES PHASE VII**
Action: 1) **Adopted** Resolution No. 5797, Accepting the Subdivision Improvements Included in Tract 9461, Commonly Known as Coyote Estates Phase VII; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.
15. **FIRST AMENDMENT TO COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT**
Action: **Directed** Staff to Execute the Agreement with the County.

16. **EXTENSION OF SUBDIVISION IMPROVEMENT AGREEMENT – ALCINI PARTNERSHIP**
*Action: **Granted** Limited Amendment to Subdivision Improvement Agreement.*
17. **2003 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY**
*Action: For Council **Information** only.*
18. **SPECIAL CITY COUNCIL MINUTES FOR MEETING OF APRIL 28, 2004**
*Action: **Approved** the Minutes as written.*
19. **SPECIAL CITY COUNCIL MINUTES FOR MEETING OF MAY 5, 2004**
*Action: **Approved** the Minutes as written.*
2. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) COMPETITION SECOND YEAR PHASING REQUESTS – Resolution No. 5790**

Mayor Pro Tempore Sellers stated that he would be recusing himself from agenda item 2.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore absent, **Adopted** Resolution No. 5790, Approving Second Year Phasing into Fiscal Year 2006-2007 for Residential Projects in the 2003-2004 Small and Micro Project Competitions.*

3. **SUPPORT OF HIGH SPEED RAIL ROUTE – Resolution No. 5791**

Council Member Tate indicated that he approves the intent of the resolution to favor either the Diablo Range or the Pacheco Range for a high speed rail route. However, the resolution goes on to state that the high speed rail route should not go through Henry Coe Park, and considers a stop in Morgan Hill. He stated that he does not want to consider a stop in Morgan Hill as it is a growth inducing action that would make Morgan Hill a metropolitan center. He indicated that he has reviewed plans for a potential tunnel under Henry Coe Park that may be worth considering. Therefore, he would not rule out having high speed rail out of the area if there is a way to construct a tunnel under Henry Coe Park that will not infringe on the park, a route that can be affective and efficient in terms of how it is constructed. He requested that the two “be it further resolved” statements from the resolution relating to these two items be deleted so that he could support its adoption.

Council Member Chang said that at last week’s Cities Association Board meeting, this item was discussed. She indicated that the Board approved a recommendation that included a southern route, removing Henry Coe Park from the recommendation. She stated that the Board was supportive of Morgan Hill’s position on the Henry Coe Park issue. She indicated that the Board did not discuss a station in Morgan Hill.

Mayor Pro Tempore Sellers said that the Legislative Subcommittee felt that a stop in Morgan Hill would be seen as a potential for economic development benefits. He said that the nature of the train is such that it would not be a commuter line as much as it will be a significant transportation thoroughfare. It was their understanding that the rail would move individuals from northern to southern California. He said that there may be different thoughts on this but that it was his understanding that it would be a goal to add economic development incentives that might create additional opportunities for businesses which could generate income for the community. He indicated that the Legislative Subcommittee did not consider all the major alternatives, thus the basis for the Subcommittee's recommendation.

Council Member Carr indicated that the Legislative Subcommittee discussed briefly the possibility of a tunnel route. He noted that the City has consistently taken a position not to support the rail route going through Henry Coe Park, and that the subcommittee took the same position. He recommended that the City continue to be consistent on this position. He felt that the environmental affects on the Park would be the same regardless of whether it is a tunnel or not. He concurred with Mayor Pro Tempore Sellers that the Subcommittee felt that a stop in Morgan Hill may assist economic development. He said that he had not given thought to a stop in Morgan Hill, and that it may be growth inducing and something that should be considered.

Mayor Kennedy noted that high speed rail would have very few stops and that they would be looking for critical stops like San Jose. He felt that it would be very unlikely that they would have two stops: one in Morgan Hill and one in San Jose. He indicated that thought is being given to having a stop at Diridon Station as being the primary stop in San Jose. He stated that he would also be concerned about trying to push for a high speed rail stop in Morgan Hill as it would cause a tremendous amount of traffic and would impact Morgan Hill. He said that he would support striking this particular resolve from the resolution.

Mayor Pro Tempore Sellers did not believe that taking a positive action would imply that the City is open to this possibility. If the City takes the action this evening, stating that it is not interested in a stop in Morgan Hill, the City has effectively eliminated this possibility for the future.

Council Member Tate felt that the priority of this item being placed on the agenda this evening was to get word to the High Speed Rail Authority that the City would like the route to go through the Diablo Range or Pacheco Pass. He recommended that this recommendation be included in the resolution and nothing beyond this. He stated that he does not have enough information to vote on the two issues. He stated that he could not support the resolution if the two resolves are retained.

Mayor Pro Tempore Sellers stated that he would support the elimination of the two resolve clauses as long as the Council does not make a negative declaration by stating that it is not interested in having a stop in Morgan Hill.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Tate, to Approve Resolution No. 5791, striking the following two "Be it Further Resolved" clauses: "...that the City of Morgan Hill strongly encourages the High Speed Rail Authority to eliminate any routes going through Henry Coe State Park;" and "...that the*

~~*City of Morgan Hill is interested in working cooperatively with the High Speed Rail Authority to site a station in Morgan Hill.*~~

Council Member Carr noted that the Council took an official position several months back regarding the high speed rail not being constructed over, under, or through Henry Coe Park. Therefore, he felt that it made sense to retain this position in the resolution.

Council Member Tate stated that he always supported the City's position that the route not go through Henry Coe Park. However, he recently learned about the tunnel option and felt that he needs to learn more to understand why this would not be a good option.

Assistant to the City Manager Eulo indicated that it was his belief that it was last fall that the Council took an official position about not constructing a rail through Henry Coe Park. He did not recall the discussion of a tunnel option at that time. He agreed that the environmental affects of a tunnel under a state park are not known at this time.

Council Member Sellers stated that elimination of the clause would not change the City's official position about the rail route.

Mayor Kennedy said that if the Council were to retain the statement, it does not mean that they cannot come back and negotiate this point. If it is found that a tunnel is a good way to route high speed rail and is cost effective with minimal environmental impacts, Council can always come back and make the request.

Council Member Tate felt that the same argument could be made if the statement is left out of the resolution.

Mayor Kennedy recommended that a statement be made that the Council does not want high speed rail through Henry Coe Park. He stated that he would support retaining the statement in the resolution.

Council Member Carr said that the statement contained in the resolution is consistent with the Council's position.

Mayor Pro Tempore Sellers stated that should the Council vote with the motion, it would result in a 5-0 vote. If amended, the Council would not have a unified statement. He urged the Council to vote affirmatively on the motion on the floor.

Council Member Carr stated that should the Council approve the motion as stated, that the City sends the Council's previous statement on Henry Coe Park along with the resolution. The statement would not be a part of the resolution but that staff sends the Council's previous position on Henry Coe Park with the resolution.

Council Member Chang supported Council Member Carr's suggestion, as she used this statement as an argument with the Cities Association Board.

Vote: *The motion carried 5-0.*

City Council Action

CONSENT CALENDAR: (Continued)

Council Member Chang indicated that she would recuse herself from items 20 and 21 as item 20 is near her residence and item 21 is located within 500 feet of her office.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote, with Council Member Chang absent, **Approved** Consent Calendar Items 20 & 21, as follows:*

20. ACCEPTANCE OF SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE III 2003-2004 PROJECT

Action: *1) **Accepted** as Complete the Sidewalk, Curb & Gutter Removal and Replacement, Phase III 2003-2004 Project in the Final Amount of \$95,874; and 2) **Directed** the City Clerk to file the Notice of Completion with the County Recorder's Office.*

21. SUBDIVISION, SD-04-07: CENTRAL-SOUTH COUNTY HOUSING

Action: ***Took No Action**, Thereby concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

Mayor Kennedy requested that staff agendize "taking no action" on Planning Commission's decision regarding subdivision maps.

City Manager Tewes clarified that a subdivision is approved by the Planning Commission on a tentative basis. A tentative subdivision contains a set of conditions which later are approved by the City Council as a final map. He indicated that the City Council has asked staff to place these tentative subdivisions before it on the agenda so that even in the absence of an appeal by the public, the Council could still take up the conditions of approval. The recommendation on the consent calendar is that the Council "not take up" the Subdivision Map. However, the Council has the opportunity to do so if it so wishes. Should the Council not wish to have these subdivision maps placed before it, staff could streamline the agenda.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 22, as follows:*

22. MORGAN HILL UNITED METHODIST CHURCH LOAN MODIFICATION

Action: 1) **Amended** the Existing Loan Agreement with the United Methodist Church to Allow for the 6-1/2 Year Extension of Repayment Period and the Temporary Suspension of Principal Payments as Requested; and 2) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Amend and Execute the Loan as Approved, Subject to City Attorney Review.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 23-24, as follows:

23. CITY MANAGER'S PROPOSED 2004-2005 BUDGET AND CAPITAL IMPROVEMENT PROGRAM

Action: 1) **Received** the City Manager's Proposed 2004-2005 Budget & Capital Improvement Program (CIP); 2) **Set May 21, 2004** as a Budget Workshop and CIP Workshop; 3) **Set June 2, 2004** as a Public Hearing on the Budget; and 4) **Set June 16, 2004** for Adoption of the 2004-2005 Budget.

25. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MINUTES FOR MEETING OF MAY 5, 2004.

Action: **Approved** the Minutes as written.

24. JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MINUTES FOR MEETING OF APRIL 28, 2004.

Action: **Approved** the Minutes as written.

City Council Action

PUBLIC HEARINGS:

26. SOLID WASTE MANAGEMENT RATE ADJUSTMENT – Resolution No. 5798

Assistant to the City Manager Eulo presented the staff report, indicating that once a year, the City adjusts its solid waste management rate. Pursuant to the franchise agreement, South Valley Disposal and Recycling has submitted a rate application based on the change on the Consumer Price Index (CPI). He noted that the CPI has not changed significantly in the last year and therefore, the maximum rate adjustment allowed would be .82%, equating to approximately 17 cents per month for those living on the valley floor. The hillside customers would also go up a similar percentage amount. He informed the Council that South Valley Disposal and Recycling's new General Manager, Phil Couchee, is in attendance for formal introduction.

Mr. Couchee stated that he is looking forward in working for South County residents and the City.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5798, Refuse Rate Resolution.*

27. DEVELOPMENT AGREEMENT APPLICATION, DA-03-09: NATIVE DANCER-QUAIL MEADOWS – Ordinance 1674, New Series

Planning Manager Rowe presented the staff report. He indicated that a supplemental correspondence dated May 17, 2004 has been forwarded to the Council from an area resident expressing concern for the safety of the great blue herrings that use the existing eucalyptus trees as a nesting site. He indicated that mitigations have been incorporated into the conditions of the subdivision approval that require a 100-foot setback be maintained during the nesting season when there is any construction activity. There is also to be a permanently recorded open space easement around the tree with landscaping that would provide a separation. He said that an existing overhead power line easement would restrict any building beyond the identified line.

Council Member Carr noted that the letter also referred to wells on site.

Planning Manager Rowe identified the location of an existing well, and that another well may exist closer to the original residence. He stated that the well used for domestic purposes has been capped and that the other well would either be properly sealed or will be brought back into production and used to irrigate the landscaping within the subdivision. He indicated that staff is aware of the fact that this is a nesting/sensitive site and that the biologist has recommended mitigations that have been incorporated as conditions of subdivision approval.

Mayor Kennedy opened the public hearing.

Rusty Lutz, author of the letter submitted to the Council, stated that it would be important to include restricting building of the home closest to the eucalyptus tree during the nesting season so that the herrings are not disturbed. He noted that grading is taking place and expressed concern about the wells and the birds.

Council Member Carr noted that the Planning Commission minutes contain a discussion regarding the concern of disturbance during the nesting season as well. He said that it was his understanding that the Planning Commission broadened the definition of the nesting season and has included a restriction on the constructing of the building nearest the nesting site.

Planning Manager Rowe informed the Council that one of the mitigation measures adopted requires that a 100-foot setback be maintained during the nesting period. He said that there is a 100-foot building activity setback required during the nesting period. There will also be a 20-foot recorded easement

placed around the base of the nesting tree. He clarified that construction improvements cannot be any closer than the power lines would allow. The easement does not allow any construction underneath these lines. This pushes the building envelope more than 100 feet away from the tree. He stated that all improvements would be at least 100-feet removed from the nesting tree. It is also stipulated that any construction activity has to maintain a 100-foot setback during the nesting period which begins mid January and ends mid June.

Mayor Kennedy requested that staff investigate the complaint that there has been activity during the nesting season and have the situation corrected.

Planning Manager Rowe said that staff has made the property owner aware of the concerns and that construction activity, including grading, cannot occur during the nesting period.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers stated that he appreciated that the Lutz family brought these issues to the Council's attention. He was pleased that mitigation measures were incorporated in the project's approval.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1674, New Series, the Development Agreement Ordinance.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1674, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-03-01: NATIVE DANCER – QUAIL MEADOWS (APN 779-02-014) (DA-03-09: NATIVE DANCER – QUAIL MEADOWS)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

28. DEVELOPMENT AGREEMENT APPLICATION, DA-04-02: CENTRAL-SOUTH COUNTY HOUSING – Ordinance No. 1675, New Series

Council Member Chang indicated that this project is located across the street from her business office. Therefore she would be recusing herself from this item. She excused herself from the Council Chambers.

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the Reading in Full of Ordinance No. 1675, New Series, the Development Agreement Ordinance.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1675, New Series, by Title Only, as follows **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-02 FOR APPLICATION MP 04-01: CENTRAL-SOUTH COUNTY HOUSING. (APNS 726-24-07, 022, 023 & 024)** by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

Council Member Chang resumed her seat on the dais.

Redevelopment Agency Action

OTHER BUSINESS:

29. REPORT FROM THE MORGAN HILL DOWNTOWN ASSOCIATION

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the Downtown Association would like to report on their past accomplishment and to request additional funding over the next four years. He indicated that approximately three years ago, the Council made a commitment to reserve \$250,000 to fund the first three years of operations for the Morgan Hill Downtown Association. He said that the Downtown Association is currently in year two of this funding, and has one year remaining. At the time, it was the Agency's hope that in year four the Downtown Association would identify an alternate funding source besides the Agency. He indicated staff would incorporate the Agency's direction within the budget approval process.

Chairman Kennedy opened the public comment.

Leslie Miles, President of the Downtown Association, shared some of the activities that have taken place in the downtown and what the Association has been doing. She indicated that the Downtown Association considers the downtown area of Morgan Hill to be the heart of the City and believe that it is their responsibility to keep the community's heart thriving. She presented a power point presentation that identified the following activities that have taken place: 1) Advocacy - worked toward attracting new businesses and helping businesses to establish themselves in the downtown; 2) conducted quarterly meetings that include networking; 3) coordinated property owners and attracting new tenants; 4) have on-going committees that cover design, events, economic development and memberships; 5) the development of new and revised ordinances to enhance the downtown (A-Frame ordinance); 6) provide non-governmental assistance to work out ideas, concerns and provide valuable informational feedback to the city; 7) implemented city sponsored programs, assisting with the implementation of the RFP process; 8) publicity – there were over 64 articles about the downtown in newspapers throughout the area and bay area; 9) published the Main Street Beat quarterly newsletter, distributing over 1600 copies;

and 10) established a website. She indicated that she would provide Agency members a copy of her power point presentation which demonstrates what has taken place in the downtown in the past 1.5 years. She indicated that the Downtown Association is working with Parking Management and trying to develop more/appropriate parking for the downtown.

Ms. Miles informed the Agency Board that the Downtown Association released an RFP requesting assistance with the PBID process. She indicated that the responses received have been included as attachments to the staff report. The one consultant who responded to the RFP indicated that it would cost approximately \$30,000 to receive consultation and provide the Association with the information being sought. As the Association reviewed the information, it was realized that based on a ratio of Palo Alto's PBID versus the number of businesses in Morgan Hill, the potential for collecting money would be approximately \$20,000 per year. The Downtown Association has decided not to proceed with this consultant because it is felt that it may not make economical sense to do so.

Ms. Miles stated that the Downtown Association is here requesting Redevelopment Agency funding because it was found that having an executive director is key to the downtown organization. She said that an executive director can establish a vision and move the vision forward for the downtown. She said that for the coming year, the Downtown Association is requesting \$27,500 which allows it to maintain the current executive director. She said that the Downtown Association has \$2,500 in membership and is looking at expanding the membership fees to \$10,000. She indicated that the Downtown Association wants to make sure that its program is not focused on events but focuses on business assistance and developing the downtown as a great place to do business, walk and live. She stated that the Downtown Association views themselves as maintaining the City's front porch and hoped that the Council would allow them to continue to do so.

Stacy Marsh, owner of Art Scene, indicated that she purchased the Goose Pond Gallery approximately 1½ years ago. She stated her support of the Agency's funding of the Downtown Association as it is paramount to do so. She felt that this group gives downtown businesses a voice, adds cohesion and focuses on the downtown. She stated that the Downtown Association would continue to help businesses do well. She could not imagine what would happen to the downtown if the Downtown Association were to be disbanded. She said that the success of the downtown would add to property values and citizens' quality of life.

Julie Goodpasture, student, stated that it would be great if the Agency Board would assist and provide funding for the downtown. She felt that people tend to forget about the heart of Morgan Hill when expansion of businesses occurs at the outskirts of Morgan Hill. She said that she is proud of the downtown, and felt that it would be great if the City could implement programs for youth so that they can get more involved with the community and be proud of it.

No further comments were offered.

Agency Member Tate complimented the Downtown Association as they have done a great job, have done great things and that he would like this to continue. He thought that what the City was getting from the \$250,000 funding was not necessarily that the Downtown Association would become self-

sufficient but that it would provide the City with a plan on how it would become self-sufficient. He noted that the Downtown Association addressed the great things that it is doing but that it has not advised the City how it would become self-sufficient. He noted that the City does not have a lot of money. He indicated that he has been looking for money to complete the library. He said that Redevelopment money is where this money has to come from. He stated that he cannot approve the funding request at this time as it does not contain what was committed to by the Downtown Association; a plan to become self-sufficient. He stated that he could support the additional \$27,000 for next year but could not approve funding beyond that year as he does not know if funds would be needed for the library. Also, he did not know how the expenditure of these funds will help the Downtown Association become self-sufficient.

Vice-chair Sellers said that two or three significant things have taken place: 1) Self-sufficiency from the beginning depended on the development of a business improvement district. He noted that this was not going to be as viable as originally considered short term. 2) It became apparent that none of these projects could come close to matching the return that was being seen from the establishment of the Downtown Association, even at a 40% return. He said that there were two simultaneous thoughts: 1) to go back and review the Downtown Association in terms of where it should be and what the premier assets of the organization are; and 2) figure out what alternatives there are for funding. He said that there has been recognition from the beginning that there are limited funds provided for the downtown. More importantly, he felt that there is competition for the funds that are remaining. He stated that he would be supportive of a four-year approach and committing the funds for the long term. He felt that the City is in a position to provide additional allocations for the library project, particularly if you look at a library in the downtown area, and still provide funding for this program. He said that businesses and property owners who will benefit from having a direct contribution from the City looked at it and felt that there would be a greater residual benefit from having these funds going to the Downtown Association, leveraging these funds. He has no doubt that the Downtown Association is first and foremost an economic development organization that has proven itself. He felt that the City would see similar results, if not more, in the future. In looking at the City's budget on Friday, he felt that the Council/Agency needs to see how it balances out. He felt that \$250,000+ over the next four years would provide the community a significant benefit.

Chairman Kennedy inquired as to the source of funding the request would come from. Has it been included in the budget? What are the impacts to the remaining funds?

Mr. Toy indicated that funding comes from the funds reserved for economic development. He stated that prior to this presentation, staff budgeted \$70,000 for this activity. For future years out, no funding has been earmarked because staff did not have direction from the Council/Agency Board. He said that should the Agency Board decide to fund the Downtown Association over a four year period, it would result in \$280,000 out of the funds remaining for economic development. He informed the Council that as of June 2004 staff estimates that there would be approximately \$4 million of unallocated funding remaining. However, this does not include next year's fiscal allocation. He said that the \$3 million earmarked for the downtown RFC is a separate category, taking \$1 million from economic development, \$1 million from streets, and \$1 million from low-moderate housing in order to create the \$3 million. He

indicated that the \$4 million in economic development funding does not include programs proposed for next fiscal year. If you take this out, \$2.5 million would remain for the life of the plan.

Agency Counsel Leichter stated that she did not believe that staff was asking the Redevelopment Agency to make a funding allocation of a specific amount this evening, noting that this recommendation was not agendaized for Agency Board discussion. She recommended that the Agency Board not make a recommendation for funding. She noted that staff is requesting that the Agency Board provide an indication of its preference on what it would like to see in the budget when it comes back to the Agency Board for adoption.

Agency Member Carr thanked the Downtown Association for its presentation. He stated that he would like to see the Downtown Association continue to thrive and grow and felt that the City should be a partner in this. However, he feels a sense of conflict. He noted that he has been consistent that the City should not be spending additional Redevelopment Agency dollars until it figures out the funding source for the library. He stated that he would be comfortable in giving direction for the budget to include additional dollars for the Downtown Association as long as it is made clear that the Agency Board has no intention of allocating these dollars until the City figures out the funding source for the library. He indicated that it is possible that this pot of money could be a funding source for the library. He would support including a place holder in the budget today. He said that the Agency Board has heard a consistent message from Vice-chair Sellers that these are “either, or” projects (e.g., library, indoor recreation center, support of the Downtown Association). He felt that the City should be finding ways to make all these projects take place. However, he did not believe that the City should be allocating dollars until it figures out the funding source. He said that he was comfortable with a place holder for these dollars. He requested that staff continue to look at this budget to see if there are ways other than cash allocations that the City can support the Downtown Association that would lessen the dollar amount from the Redevelopment Agency. Two weeks after approval of the budget, when the Council/Agency has the major discussion about the funding for the library, this may be one of the possible pots of money that may be considered.

Agency Member Tate said that he heard Vice-chair Sellers state that the Agency should give the Downtown Association a long term commitment for funding. Yet, he thought that the Downtown Association had given the Agency a commitment to return with a plan on how they would make themselves self-sufficient. He did not see the Agency holding them to this commitment. He felt that this would become an ongoing subsidy, one that he disagreed with. He does not know what the members are doing to sustain themselves. He stated that he would be willing to commit funding for next year but nothing beyond next year until the Agency sees a plan for self-sufficiency.

Vice-chair Sellers did not believe that the Agency was far apart on the issue. He noted that the Agency is willing to fund \$27,500 in Fiscal Year 2004-05. He felt that the problem the organization is grappling with is that the premise under which they were going to present a self-sufficiency plan got pulled out from under them as it was thought that they would achieve a much higher return on the bid. Also, the emphasis and strengths of the Downtown Association went in a different direction. He felt that the prudent thing to do would be to look at next year’s funding, giving thought to where this money comes

from in developing the self-sufficiency plan. He also felt that in the budget review, the Agency would be able to allocate sufficient funds, identify funding sources for the library, and give consideration to a long term commitment and what this would mean to the downtown. He felt that all three can be accomplished. He felt that the Downtown Association has put forth good reasons why the Agency should continue funding in future years.

Agency Member Tate said that if it is the case that it would take a permanent subsidy to assist the Downtown Association, he wanted to know this in order to consider this fact.

Chairman Kennedy said that the presentation from the Downtown Association was compelling and felt that more should be done for the downtown, as it is the heart of the community. He felt that the downtown deserves a special effort and that more should be done for the downtown than what the City would do for a big box retailer, despite the fact that sales tax revenues may not be as great. He stated that he would support the concept of keeping this funding request as a place holder and requested that the Downtown Association return with a schedule/date when it would have a plan in place on how it will become self-sufficient.

Agency Member Chang inquired whether the Agency would fund the Downtown Association for four years if they return to the Agency with a plan for self-sufficiency.

Vice-chair Sellers said that the City Council/Redevelopment Agency in fact approves place holders in the adoption of the budget and that projects proceed based on funding becoming available. He said that it was important to note that the Downtown Association has an incentive to come up with a long term funding plan. From sitting in on Board meetings, he knows that the Board is aware and anxious to move forward and come up with a funding plan. Therefore, he has no doubt that they would complete a funding plan. As the City Council's representative to the Downtown Association, he would continue to urge that they move toward this end.

Action: *The Agency Board provided the above comments.*

City Council Action

OTHER BUSINESS:

30. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY INCORPORATED (IDI) TO CO-SPONSOR THE FOURTH OF JULY ACTIVITIES

City Manager Tewes noted that this item has been removed from the agenda and that staff would re-agendize this item when IDI is ready to proceed.

Action: *This item removed from the agenda.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Pro Tempore Sellers said that based on the Council's workshop earlier this evening, he requested that staff agendize the discussion of litigation options for Coyote Valley. He noted that Supervisor Gage made a comment that the City needs to make a strong statement about how far the City is prepared to take this issue. He felt that it would be appropriate to agendize the discussion about the need to retain counsel, or whether the Council needs to make its intentions known about Coyote Valley.

City Attorney Leichter inquired whether the discussion should be scheduled for closed session.

Mayor Pro Tempore Sellers stated that this would be more of a statement of how strong the City feels about the actions being taken and what the City is prepared to engage in. He suggested that this portion of the discussion be made public. He felt that it may be premature to undertake litigation at this point. Therefore, he felt that this would be a more generalized discussion to make clear the strength of Morgan Hill's feelings on the issues surrounding Coyote Valley and that the City would move forcefully on them.

RECONVENE TO CLOSED SESSION

City Attorney/Agency Counsel Leichter announced the listed closed session items.

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 8:43 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 9:24 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:25 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY